In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THOMAS D. McCARTHY, UNITED STATES Marshal for the Southern District of New York, Appellant,
v.
JULES W. ARNDSTEIN.
No. 404.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the Court to advance this case for hearing at an early date during the present term.

Having been adjudged an involuntary bankrupt, Petitioner (Appellee here), without objecting on the ground of self-incrimination, filed schedules under oath which purported to show his assets and liabilities. Upon examination as to these schedules under section 21 (a) of the Bankruptcy Act he refused to answer numerous questions on the ground that, as such answers might incriminate him, he was relieved from making answer by the Fifth Amendment to the Constitution. Judge Hand directed him

to answer said questions, and, upon refusal, he was adjudged in contempt and committed to jail.

He thereupon applied for a writ of habeas corpus to Circuit Judge Manton, sitting in the District Court, who denied the application; and then to Circuit Judge Hough, who also denied the application. On appeal from the order of Judge Manton denying the application this Court reversed said order. *Arndstein* v. *McCarthy*, 254 U. S. 71, 379. The District Court thereupon discharged the Petitioner upon habeas corpus, from which judgment the Marshal appeals to this Court.

On the prior appeal this Court held that the Petitioner was entitled to the writ and that the propriety of his detention could be determined after a return to the writ had been made; that as the schedules did not show that a crime had been committed the mere filing of them did not constitute a waiver of the bankrupt's constitutional right to stop short whenever he could fairly claim that to answer might tend to incriminate him. But the questions answered by the bankrupt, and the return of the Marshal to the writ of habeas corpus, which denied much of the matter contained in the original petition and set up new facts not contained therein, were not before the Court on that appeal.

The question now presented, therefore, is whether, by filing schedules and answering certain questions regarding them, the bankrupt waived his constitutional privilege as to self-incrimination, and thereby opened the door to unlimited cross-examination.

Since the decision of Judge Hand, July 7, 1921, it has been impossible to elicit testimony from bankrupts in a number of important cases. It is therefore submitted that the character of the question involved, the importance of the case to the general public, and the necessity of proper administration of the Bankruptcy laws, warrant an early hearing of this case.

This application is made on behalf of the Appellant and at the instance of counsel for the Trustee in Bankruptcy.

Notice of this motion has been served on opposing counsel.

JAMES M. BECK,
Solicitor General.

JANUARY, 1923.

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